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Supreme Court of the United States

OCTOBER TERM, 1937

No. 760

ARKANSAS FUEL OIL COMPANY,

Appellant,

versus

STATE OF LOUISIANA EX REL. HYMAN MUSLOW,

Appellee.

BRIEF OF APPELLEE IN SUPPORT OF MOTION TO
DISMISS APPEAL AND, IN THE ALTERNATIVE,
FOR AFFIRMANCE OF THE JUDGMENT OF THE
STATE COURT.

✓ JOHN B. FILES,

Counsel for Appellee,
Hyman Muslow.

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STATE COURT.**

STATEMENT

This suit was filed in the District Court, Caddo Parish, Louisiana, by Hyman Muslow, to recover the value of oil sold by him to the Louisiana Oil Refining Corporation. Subsequently the Arkansas Fuel Oil Company, appellant, herein, was substituted defendant. Hyman Muslow, appellee herein, acquired a written oil and gas lease from A. C. Best and Sherman G. Spurr, April 18, 1933, which was duly recorded in the proper conveyance records of Caddo Parish, Louisiana, where the property is situated. A. C. Best and

Sherman G. Spurr acquired said property by proper transfer from the Ackerman Oil Company, May 24, 1927. Muslow immediately went into possession of the property, developed it for oil and gas, and sold and delivered oil from said property to the Louisiana Oil Refining Corporation, beginning July 1, 1933, and ending August 24, 1934. The District Court rendered a judgment in favor of Hyman Muslow and against the Arkansas Fuel Oil Company, substituted defendant, in the sum of \$445.55, with legal interest from September 30, 1934.

An appeal was taken from the District Court to the Court of Appeal and judgment there rendered June 1, 1937, affirming the judgment of the District Court. A rehearing was applied for June 11, 1937, and refused June 30, 1937. An application for writ of certiorari was taken to the Supreme Court of the State of Louisiana and the writ refused November 2, 1937.

JURISDICTION

The jurisdiction of this Court is invoked under *Section 344, Title 28, U. S. Code Annotated*. The statute reads in part:

"Where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity, or where the validity of a state statute is contested on the ground as being repugnant to the Constitution, treaty or laws of the United States and the decision is in favor of its validity."

NO RIGHT OF APPEAL

No Federal statute and no provision of the Federal Constitution is drawn in question in this case. A correct decision of the issues in this case does not involve a Federal

statute, nor does it involve the interpretation of the due process or equal protection clauses of the Constitution of the United States. The plea of unconstitutionality is as follows:

"That said statute, if enforced in this case in the manner relied upon by relator, would require respondent to pay to relator the value of property which did not belong and never has belonged to plaintiff, thereby leaving respondent responsible and liable to the true owner of said property for the value thereof, and in that manner deprive respondent of its property without due process of law, and denying to it the equal protection of the law, contrary to the provisions and requirements of the Constitution of the United States and the State of Louisiana."¹

The mere allegation that the Act of the Legislature of Louisiana deprives the appellant

"of its property without due process of law and denying to it the equal protection of law, contrary to the provisions and requirements of the Constitution of the United States and the State of Louisiana"

does not present a Federal question. It merely presents a conclusion of the pleader. The Federal question must be determined from the allegations in the petition, giving these allegations the natural and logical meaning and application, disregarding the arguments, conclusions and surmises of the pleader. *Devine v. Los Angeles*, 50 L. Ed. 1046; *Houston & T. C. R. R. Co. vs. Texas*, 44 L. Ed. 673; *St. Joseph & G. I. R. Co. vs. Steele*, 42 L. Ed. 315; *Chapel vs. Waterworth*, 39 L. Ed. 85.

It appears from the entire record that the case does not really and substantially involve a Federal question, and same must be denied. *Williams vs. Nottawa*, 26 L. Ed. 719.

¹ R. 4.

In *Des Moines vs. Des Moines City Oil Co.*, 53 L. Ed. 958, Mr. Justice Holmes in delivering the opinion of the Court said:

"This is a plea brought in the Circuit Court by an Iowa corporation against a City of Iowa. The ground of jurisdiction is that a resolution of the city council of that city is a law impairing the obligations of contracts within the meaning of the Constitution of the United States and if carried out will take the property of the corporation without due process of law, contrary to the Fourteenth amendment."

The question involved was the interpretation of a municipal ordinance of the city of Des Moines, which ordinance required the railway company and the interurban company to remove their tracks, poles and wires from the city streets. The Court, interpreting this city ordinance, said:

"We are of the opinion that this is not a law impairing the rights alleged by the appellee, and therefore that the jurisdiction of the Circuit Court can not be maintained."

In the instant case, the Legislature did not deprive the defendant of any of its property or any of its rights. It simply required the defendant company to pay for oil purchased from the record owner and it would be protected in the payment, provided third persons had not pending a suit for the ownership of the property. Wherein is the defendant deprived of its property and wherein is there a violation of the Constitution of the United States?

The title to the oil produced, sold and delivered by appellee, Hyman Muslow, to the appellant, Arkansas Fuel Oil Company, is based upon the law of Louisiana. The Arkansas Fuel Oil Company, having purchased the oil from

Hyman Muslow, is estopped to question his title. The judgment appealed from does not deprive the Arkansas Fuel Oil Company of any of its rights under the Constitutions, either of the United States or the State of Louisiana, it simply requires the Arkansas Fuel Oil Company to pay for oil sold and delivered to it by Hyman Muslow. The mere declaration by the Arkansas Fuel Oil Company that it has a right to be sued by some unknown claimant of the oil does not present a Federal question. The allegations that some person other than the appellee may claim the oil by suit at some future date does not present any Federal question. If this be true, then every time the Arkansas Fuel Oil Company buys a barrel of oil or purchases a mineral lease, in defense to a suit for the purchase price, it may raise a Federal question which would cause this Court to sit as a Court of review of the judgment of the State Court.

QUESTIONS OF FACT

The basis of the constitutional plea is that Act 64 of the Legislature of Louisiana for the year 1934 "would require respondent to pay to relator the *value of property which did not belong and never had belonged to plaintiff*, thereby leaving respondent responsible and liable to the true owner of said property for the value thereof." (Italics ours.) This necessarily raises the question of ownership of the property. The ownership of this property is a question of fact which must be decided by the State Court in which the suit was instituted. The Arkansas Fuel Oil Company attacked the title acquired by Hyman Muslow for the reason that the deed from the Ackerman Oil Company to A. C. Best and Sherman G. Spurr, under whom Hyman Muslow holds a mineral lease, did not convey title, first, because it did not contain a serious consideration, and, second, no

authority was shown by the officers on behalf of said company to make said deed.

The judgment of the State Court declared:

"* * * but, it is argued, the absence of any written authority from the Ackerman Oil Company to its executive officers to execute the deed qualifies the act of sale to such extent that it is stripped of an indispensable attribute to its quality of being translativ of property. It is not intimated that these officers were not clothed with authority to act for the company. Their good faith is not challenged. Over eight years had elapsed when this suit was filed and the company, the only person to complain, had not raised its voice in protest of its officers' action. Such an act of sale is presumed to have been executed by authority and, for the purposes of said act, is translativ of property in point of form."¹

As to the contentions that the Act did not import a serious consideration, the Court said:

"We do not think there is merit in the contention that the deed is not translativ of property because of the faulty expression of its consideration. It is presumed in a commutative contract that it is executed for a valid and adequate consideration, unless lack of such is negatived on its face."²

It has been frequently held by this Court that a review of the decision of a State Court will not be made on questions of fact. *Equitable Life Assurance Association vs. Brown*, 187 U. S. 308.

The ownership of the oil is a question of fact, dependent entirely on the law of the State of Louisiana, where the oil

¹ R. 40.

² R. 41.

was produced and where it was sold and delivered. The Arkansas Fuel Oil Company has not been deprived of any of its rights without process of law. It has had a hearing in Court. It has received the oil, used it for its own advantage. It is before this Court arguing that if it has to make payment for the oil to the person from whom it received it, some other person might sue it for the value of said oil. What right or authority has the Arkansas Fuel Oil Company to urge the rights of some other person, under whom it holds no rights, when that other person does not urge it? It has had possession and has consumed by use this oil in the operation of its business since 1934. No other person has, to this day, instituted suit to recover any interest in this oil. Indeed no other person has any interest in this oil. Wherein does a Federal question arise when the seller of the oil is seeking to collect the price the Arkansas Fuel Oil Company agreed to pay for it?

In the District Court, appellee, as plaintiff, alleged that the Arkansas Fuel Oil Company, having purchased and received delivery of the oil from him, without qualification, is obligated to pay him for the oil and is estopped to challenge his ownership, and that it would be inequitable for the Arkansas Fuel Oil Company to hold both the thing and its price, when no adverse claim had been made to the oil in whole or in part.

Appellee is not attempting to deprive the Fuel Oil Company of any property or rights to property it owns, because it is admitted that the Fuel Oil Company owes for the oil so sold and delivered to it by appellee. It is admitted that the Fuel Oil Company has used and received the value of the oil, and is now withholding both the oil and its value from appellee. It is admitted that no third person has made any claim or instituted any suit for an interest in said oil.

It is clear that the plea of estoppel should have been sustained by the State Court. Where there are several questions upon which the litigation may be decided, one estoppel, the other the constitutionality of an act, the question of estoppel, which does not involve the constitutional question, should control. The State Court held that the plea of estoppel had merit, but "it is unnecessary to definitely pass on the issue thereby raised, in view of the decision reached by us on the more important questions submitted for adjudication."¹

Where the plea of estoppel, as in this case, was sufficiently broad to sustain the judgment rendered, no Federal question has been presented or will be entertained. *Enterprise Irrigation District vs. Farmers Mutual Canal Co.*, 61 L. Ed. 644.

Again, the constitutional questions discussed by the Trial Court involved the State statute in respect to the Constitution of the State of Louisiana, which held that the act did not violate the constitutional provisions. The opinion of the State Court and the constitutionality of the State Law, as regards the constitution of Louisiana, is binding upon this Court and presents a question not reviewable.

Hibben vs. Smith, 48 L. Ed. 195;
Campbell vs. Olney, 67 L. Ed. 1021;
Miller & Lux vs. Sacramenta and San Joaquin, 65 L. Ed. 859;
House vs. Road Improvement District, 69 L. Ed. 229;
Enterprise Irrigation Dist. vs. Farmers Mutual Canal Co., 61 L. Ed. 644.

The statutes under which these proceedings were instituted is a remedial statute. It provides that unless a third person institutes a suit within a specific time the right of action against the purchaser of the oil becomes barred.

¹ R. 45.

Limitation statutes prevail in every State and in many statutes enacted by Congress. They are not unconstitutional as depriving one of his property without due process of law.

To give this Court jurisdiction over the State Court, there must be not only a claim in respect to some constitutional right, but there must be a real, substantial controversy of the required character, which deserves serious attention. *United States Fidelity & Guaranty Co. vs. State of Oklahoma*, 63 L. Ed. 876.

In *Zucht vs. King*, 67 L. Ed. 194, this Court said:

"Though the validity of a law was formally drawn in question in a suit in the State courts, it is the duty of the Supreme Court to decline jurisdiction whenever it appears that the constitutional question presented is not and at the time of the granting of the writ, was not, substantial in character."

We respectfully submit that the motion to dismiss should be sustained, with costs.

LOUISIANA JUDGMENT IN HARMONY WITH THE DECISIONS OF THIS COURT

The State Courts decided that Hyman Muslow was the owner of the oil; that he sold and delivered it to the Arkansas Fuel Oil Company and that the Arkansas Fuel Oil Company must pay for the oil. Act 64 of 1934 was enacted by the Legislature of the State of Louisiana to meet a serious situation, brought about by the illegal withholding of payment for oil by various pipeline companies or purchasers, upon some unfounded contention that there was some defect in the title. In many cases the payments were withheld

from the small land owner or mineral owner for months and years, during which time the oil was used by the pipeline companies and refineries, in the operation of their business. The Legislature, in its discretion, enacted this remedial statute, granting protection to those companies which had purchased oil and which paid the record holder for same. The constitutionality of this statute is fully discussed in the opinion ¹ of the Court of Appeal, from which this appeal is taken.

The State Court could easily have decided this case in favor of the appellee on the plea of estoppel, that the appellant, Arkansas Fuel Oil Company, as the purchaser, could not dispute the title of appellee, the vendor. Hyman Muslow, the vendor, and the Arkansas Fuel Oil Company, vendee, stand in the relation of landlord and tenant, and the vendee, Arkansas Fuel Oil Company, cannot disavow the title of Hyman Muslow. *Bush vs. Marshall*, 6 How. 284; 12 L. Ed. 440.

The Arkansas Fuel Oil Company not only has no right to champion the title of any other person than Hyman Muslow, from whom it purchased the oil and from whom it accepted delivery, but it can not dispute the title of Hyman Muslow. *Muller vs. Hoth*, 110 La. 105; *Rocques vs. Levecque*, 110 La. 306.

A vendee who goes into possession can not dispute the title of his vendor while he remains in possession. *Keating vs. Wilbert*, 110 La. 461. This has peculiar application to the present case. The Arkansas Fuel Oil Company is in possession of oil received from Hyman Muslow for which it had agreed to pay a price. In order to defeat the payment for the oil, it can not champion an interest of some person unknown.

¹ R. 36 to 45.

The question of the liability of the appellant to the appellee for the oil purchased does not depend upon the constitutionality *vel non* of Act 64 of 1934 of the State of Louisiana. In fact the constitutionality of this act has nothing to do with the appellant's liability.

For a complete discussion of the merits of this case, we refer this Court to the able opinion of the Court of Appeal.

We submit, therefore, that the plea of estoppel should be sustained and the judgment appealed from is correct as to the constitutionality of Act 64 of 1934 of Louisiana, and should be affirmed.

CONCLUSION

We therefore submit that the appeal should be dismissed because,

First, no Federal question is involved in this case.

Second, petitioner has not specially set up any right under a Federal law;

Third, a proper decision of this case depends upon questions of fact, not reviewable by this Court.

In the alternative, in the event this Court does not dismiss this appeal, we submit that the judgment appealed from is correct, in accord with the prior decisions of this Court, and same should be affirmed.

Respectfully submitted,

JOHN B. FILES,

Counsel for Appellee,
Hyman Muslow.